

MAYER, BROWN, ROWE & MAW LLP  
LEE H. RUBIN (SBN 141331)  
SHIRISH GUPTA (SBN 205584)  
Two Palo Alto Square, Suite 300  
Palo Alto, CA 94306  
Telephone: (650) 331-2000  
Facsimile: (650) 331-2060  
lrubin@mayerbrownrowe.com  
sgupta@mayerbrownrowe.com

Attorneys for Defendant TD Ameritrade, Inc.

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA—SAN FRANCISCO DIVISION**

MATTHEW ELVEY, an individual, and  
GADGETWIZ, INC., an Arizona  
corporation, on their own behalf and on  
behalf of all others similarly situated,

Plaintiffs

v.

TD AMERITRADE, INC., a New York  
corporation, and DOES 1 to 100,

Defendants.

Case No. C 07 2852 MJJ

STIPULATION AND ~~[PROPOSED]~~ ORDER  
RESETING MOTION TO DISMISS AND  
MOTION FOR PRELIMINARY INJUNCTION

Judge: Martin J. Jenkins

WHEREAS, Plaintiff Matthew Elvey and Gadgetwiz.com filed a First Amended  
Complaint against Defendant TD Ameritrade, Inc. ("TD AMERITRADE"), on June 28, 2007,  
and Motion For Preliminary Injunction on July 10, 2007;

WHEREAS, TD AMERITRADE field a Motion to Dismiss the First Amended Complaint  
on July 18, 2007;

1 WHEREAS, pursuant to Civil Local Rule 7-2, the hearing for Plaintiffs' Motion for  
2 Preliminary Injunction is currently set for August 14, 2007, and the hearing for TD  
3 AMERITRADE's Motion to Dismiss is currently set for August 28, 2007;

4 WHEREAS, on June 29, 2007, the Court ordered a case management conference to be  
5 held at 2:00 p.m. on September 18, 2007;

6 WHEREAS, TD AMERITRADE's counsel has a scheduling conflict with the current  
7 hearing date of August 14, 2007 for the Motion for Preliminary Injunction and Plaintiffs' counsel  
8 has a scheduling conflict with the current hearing date of August 28, 2007 for the Motion to  
9 Dismiss;

10 WHEREAS, the Motion to Dismiss and Motion for Preliminary Injunction raise common  
11 issues of law such that it will likely be more efficient for the Court to consolidate the hearing  
12 dates for the two motions;

13 WHEREAS, it would be efficient for the parties, and may be more efficient for the Court,  
14 to align the hearing dates for the pending motions with the current date for the case management  
15 conference, September 18, 2007;

16 WHEREAS, the proposed schedule set forth in this stipulation will not postpone any  
17 deadline set by the Court and serves judicial economy;

18 IT IS HEREBY STIPULATED, by and between the parties, that pursuant to Civil Local  
19 Rule 6-2, Plaintiffs' Motion for Preliminary Injunction and TD AMERITRADE'S Motion to  
20 Dismiss shall both be set for September 18, 2007;

21 IT IS FURTHER STIPULATED that TD AMERITRADE will file its Opposition to the  
22 Motion for Preliminary Injunction no later than August 23, 2007, and that Plaintiffs will file their  
23 Opposition to the Motion to Dismiss no later than August 27, 2007. The parties shall file their  
24 respective reply briefs no later than September 4, 2007.

25 IT IS FURTHER STIPULATED that this stipulation shall not be construed to reflect the  
26 position of any of the parties concerning the urgency or absence of any urgency of the relief  
27 sought in the Motion for Preliminary Injunction.  
28

1 Dated: July 20, 2007

2 By: /s/ Alan Himmelfarb  
3 LAW OFFICES OF ALAN HIMMELFARB  
4 Alan Himmelfarb  
5 2757 Leonis Blvd.  
6 Los Angeles, CA 90058  
7 Telephone: (323) 585-8696  
8 Fax: (323) 585-8198  
9 [Consumerlaw1@earthlink.net](mailto:Consumerlaw1@earthlink.net)

10 Attorneys for Plaintiffs

11 Dated: July 20, 2007

12 By: /s/ Lee H. Rubin  
13 MAYER, BROWN, ROWE & MAW LLP  
14 Lee H. Rubin

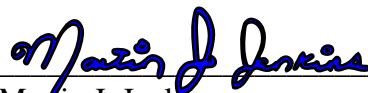
15 Attorneys for Defendant TD AMERITRADE

16 *E-Filer's Attestation: Pursuant to General Order No. 45, Section X (B), Lee H. Rubin hereby  
17 attests that the signatory's concurrence in the filing of this document has been obtained.*

18 ~~**[Proposed] Order**~~

19 Pursuant to Stipulation, and for good cause shown, IT IS SO ORDERED.

20 DATED: 7/25/2007

21   
22 Martin J. Jenkins  
23 UNITED STATES DISTRICT JUDGE